March 12, 2008

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: DISH Network/DIRECTV HD – Carry-One, Carry-All Proposal, CS Docket Nos. 98-120, 00-96

DISH Network and DIRECTV have proposed a clear path forward to a high definition (HD) "carry-one, carry-all" obligation in all local markets in which any local broadcast programming is provided by satellite in HD.[1] Encouragingly, a number of parties across different industries and constituencies have voiced their support for the Direct Broadcast Satellite ("DBS") industry's compromise approach, and we urge its prompt adoption.

The outlier in this proceeding is the National Association of Broadcasters (NAB). NAB's most recent fishing expedition is a calculated effort to scuttle a reasonable compromise. The DBS joint proposal, offered in good faith, was filed in response to inquiries by Commissioners' offices and FCC staff who – understanding the capacity challenges facing the satellite industry – requested that the DBS industry propose a phased-in schedule with realistic benchmarks. Although such an aggressive schedule is burdensome and requires significant additional investment by the DBS industry, it has the advantage of providing certainty and clarity for all stakeholders – policymakers, DBS companies, broadcasters, consumers, and investors.

Now, at the eleventh hour, NAB is attempting to derail the process. Specifically, having neglected to respond to the public filings over the past year addressing DBS-capacity issues, NAB has now propounded a series of questions that either bear no relevance to the issues presented in this proceeding or seek basic information about fleet and network operations that is readily accessible in the public domain.

Nonetheless, we respond to NAB's litany of questions with technical and operational details in the attached appendices and associated documentation. This material only confirms that the February 15, 2008, DBS joint proposal balances the needs of viewers, broadcasters, and satellite providers to maximize the amount of HD programming available to consumers across the nation in a manner consistent with the DBS must carry statute, satellite technology, and the needs of MVPD competitors. It also helps ensure that a smooth digital transition is not undermined for 30 million DBS households,

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[1] *See* Letter from Linda Kinney, Vice President, Law and Regulation, DISH Network, and Susan Eid, Senior Vice President, Government Affairs, DIRECTV, Inc. to Marlene Dortch, Federal Communications Commission, MB Docket Nos. 98-120, 00-96, and 07-91 (Feb. 15, 2008) ("*Joint Proposal Letter*").

which could well result if NAB succeeds in steering the Commission off course with an unprecedented and unnecessary document request.

A Growing Consensus Supports the DBS Industry's Approach

In the four weeks since DISH Network and DIRECTV first proposed a phased-in approach to HD must carry, a growing number of parties have expressed their support for our approach:

- Members of the Congressional Hispanic Caucus on February 14, 2008 expressed their concern with any "overly burdensome carriage requirements" that do not "account for DBS' particular capacity constraints." They highlighted their objection to any regulatory action that would force DBS providers to "drop markets or programming in the short run," including Spanish-language programming. Instead, they advocated for a solution that did not "mandate 100% HD must carry all at once in 2009." The letter is attached as Tab 1.

- The Media Access Project on March 4, 2008 similarly expressed its support for "the compromise proposal offered by DIRECTV and DISH Network." They described our proposal as "a measured approach that provides a clear roadmap to full HD must carry compliance in all HD markets within a reasonable timeframe." They stressed the critical need to "ensure continuity of existing services to all 30 million DBS subscribers," and urged that any regulatory solution permit DBS providers to continue to "offer a viable competitive choice to cable companies." Media Access Project's statement is attached as Tab 2.

- Windstream, a telephone provider with a rural customer base, on February 26, 2008 advocated a flexible approach to "ensure our rural customers, to the greatest degree possible, have the ability to access HD video services." Given the "unique capacity issues of satellite," Windstream recommended an "approach that does not require a flash cut to 100% HD must carry in 2009, but rather establishes a later date-certain by which such carriage should be implemented." Windstream's letter is attached as Tab 3.

- The Satellite Industry Association on March 5, 2008 noted that satellite providers "maximize their available capacity," and, therefore, concluded that "[i]n order to satisfy HD must carry requirements, satellite operators must use and have access to additional spectrum resources and construct new spacecraft." SIA recommends that any new obligations be "phase[d]-in … over a minimum of four years from the DTV transition." SIA's letter is attached as Tab 4.

These third parties have corroborated our description of the technical realities of satellite service, justifying a more gradual transition. The diversity of these parties and the unanimity of their positions confirm that the DBS proposal is in the public interest and successfully balances the interests of consumers and the industry.

Imposition of DBS HD Must Carry Obligations Requires Time and Resources to Comply

Given that it is exponentially more burdensome for DBS providers to carry a high definition digital signal than a standard definition digital signal, the Commission should provide sufficient time for satellite companies to acquire the new capacity (and new frequencies) to comply with an HD carry-one, carry-all requirement. In most instances, this will require new satellites designed specifically to comply with any new rules. As detailed in Appendix B, satellite design and construction timetables – as well as spectrum availability issues – support the proposed milestones and an end date of no earlier than February, 2013. Given the "practical and technical limitations of satellite operations now and in the future," we believe that the Commission has clear evidentiary and statutory support for providing this reasonable transition period for satellite providers before the imposition of a substantial new regulatory requirement.[2] Such a transition mirrors Congress's framework for the introduction of analog local-into-local in 1999, when a multi-year period was provided to DBS providers to commence local service free from carriage obligations because of the "the logistics of adding hundreds of local television stations to its channel line-up."[3] Similarly, it comports with the Commission's prior finding that satellite "carriers need some measure of control in configuring their satellite systems to meet their statutory obligations."[4]

In fact, NAB's public position last year with respect to digital must carry issues acknowledged the need for a transition period. Before the House Committee on Energy and Commerce, a NAB designee stated plainly that "satellite carriage should be subject to the same requirements, with the FCC empowered to implement different timing for their imposition based on satellite's more limited but growing spectrum capacity."[5] The DBS industry has offered a proposal that does just that. HD carry-one, carry-all in all HD markets – the satellite equivalent of cable must carry – with "different timing," in this case a firm date of February 2013 with applicable compliance benchmarks. Tellingly, when faced with real world technical implementation challenges, NAB routinely seeks time to comply with new regulation.[6] We ask only the same consideration be given to DBS providers.

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2 *See FCC Written Response to the GAO Report on DTV* at 45.

3 *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, ¶ 20 (2000); 47 U.S.C. § 338(a)(3).

4 *Id.*, ¶ 22.

5 Statement of K. James Yager, Chief Executive Officer Barrington Broadcasting Co., LLC on behalf of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., Hearing before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Mar. 28, 2007)(detailing NAB's proposal with respect to multicast must carry).

6 *See e.g.*, Petition for Reconsideration and Clarification of the Association for Maximum Service Television, Inc. ("MSTV") & NAB, *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, at 6 (Feb. 29, 2008)(seeking one-year delay of effective date of PSIP standard because broadcasters need the additional time to procure and install the needed hardware and software); Reply Comments of MSTV and NAB, *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, at 10-11 (Aug. 30, 2007)(requesting flexible period of one year after digital transition to complete digital construction because of technical and practical difficulties of the transition); Comments of MSTV and NAB, *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, at 4-5 (Aug. 15, 2007)(noting practical realities cannot be ignored in developing DTV transition policies and thus advocating flexibility in DTV policy).

Any Further Delay Adversely Affects Digital Transition

Until last week, the NAB did not participate actively in the DBS HD must carry proceeding. Over the past several years, both DBS providers have updated the Commission routinely on their satellite systems and the heavy burden faced by the industry if an HD must carry requirement were imposed without taking capacity limits into account.[7] If the NAB had questions or concerns about the validity of DBS providers' repeated presentations, it had every opportunity to raise them. It did not.

Now, less than a year before the transition, NAB wants to ask more questions about DBS operations – including tangential inquiries like whether flash memory is installed in our set-top boxes – rather than recognize the urgency of the upcoming digital transition. The transition already poses operational challenges for the DBS industry, which needs to ensure the smooth transition of 30 million satellite households (representing more households than receive broadcast signals over the air today). In virtually every other instance relating to the transition, NAB has urged "both the industry and the FCC [to] act with deliberate speed to meet the deadline."[8] This departure from NAB's advocacy with respect to transition-related matters is regrettable.

In adopting the final DTV table this month, the Commission expressed the desire to act "as expeditiously as possible to provide stations with the certainty they need to complete their digital buildout."[9] We ask for similar prompt action as the DBS industry prepares for the digital transition. The cable industry had eight years from the imposition of a digital must carry obligation to plan and prepare for February 2009; DBS providers will have a little over eight months to do the same.[10] This inequitable treatment should not be exacerbated by NAB's attempt to derail this proceeding.

DBS Capacity Predictions Have Proven Accurate and Sound

NAB repeatedly accuses the DBS industry of exaggerating its past capacity constraints. The most recent example offered by NAB is the 2007 digital carriage obligation in Alaska and Hawaii. Yet, a review of DISH Network's position in that proceeding actually lends support to the DBS capacity claims here and shows that DISH Network was quite prescient in its 2005 filings. Specifically, when faced with an obligation to provide carriage for all digital signals of Alaska and Hawaii broadcasters –

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7 *See generally* Letter to Marlene H. Dortch from Linda Kinney, *Ex Parte Presentation*, CS Docket Nos. 00-96, 98-120 (Feb. 15, 2008); Letter to Marlene H. Dortch from Bradley K Gillen, *Ex Parte Presentation*, CS Docket Nos. 00-96, 98-120 (Sept. 6, 2007); Letter to Marlene H. Dortch from Bradley K. Gillen, *Ex Parte Presentation*, CS Docket No. 00-96, 98-120 (Aug. 31, 2007); Letter to Marlene H. Dortch from Bradley Gillen, *Ex Parte Presentation*, CS Docket No. 00-96 (Aug. 15, 2007); Letter to Marlene H. Dortch from Bradley Gillen, *Ex Parte Presentation*, CS Docket No. 00-96 (Aug. 3, 2007); Letter to Marlene H. Dortch from Linda Kinney, *Ex Parte Presentation*, CS Docket Nos. 00-96, 98-120 (Feb. 11, 2007); Letter to Marlene H. Dortch from Ross Lieberman, *Ex Parte Presentation*, MB Docket Nos. 00-96, 98-120, 00-2 (June 15, 2006); Letter to Marlene H. Dortch from Pantelis Michalopoulos & Rhonda M. Bolton, *Ex Parte Presentation*, CS Docket No. 98-120 & MB Docket No. 03-15 (Jan. 14, 2005); Letter to Marlene H. Dortch from David Goodfriend, *Ex Parte Presentation*, CS Docket No. 98-120 (Jan. 31, 2003).

8 Comments of NAB/MSTV, MB Docket No. 07-91, at 3-4 (Aug. 15, 2007).

9 *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, FCC 08-72, ¶ 3 (2008).

10 *Carriage of Digital Television Broadcast Signals,* First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22 (Jan. 23, 2001).

high definition and multicast signals – DISH Network did not state it could not comply (as asserted by NAB); it explained that compliance would have anti-consumer consequences:

> Superimposing a multicast requirement on the already burdensome HD carriage rule would likely result in EchoStar being unable to use available spectrum on a spot beam to provide regional programming that Alaskans and Hawaiians want, as opposed to programming dictated by government fiat. This would disserve subscribers in Alaska and Hawaii – the very class of consumers that Congress intended to benefit.[11]

That is exactly what happened in June 2007: DISH Network reserved sufficient capacity on its satellite spot beams over Alaska and Hawaii for each broadcaster's content. Approximately one-third of that spectrum – the equivalent of three transponders – remains empty today. DISH Network cannot repurpose those transponders because, if a broadcaster were to start broadcasting in HD, DISH would be required to retransmit the HD signal with almost no lead time. In the end, an overly burdensome requirement has resulted in less service to DBS subscribers – just as predicted by DISH Network.

More generally, a review of the history of local-into-local supports DBS providers' position in this proceeding. There are finite limits to satellite capacity at any given time: satellite transponder space is maximized, and compression and modulation efficiencies are exhausted. Explaining that DISH Network's system is very near, or at, total useable capacity today does not foreclose future expansion. By way of example, in 2002, there were real limits to DBS providers' ability to reach many local markets. Since that time, DISH Network has invested or acquired multiple spot beam satellites, gained access to additional satellite spectrum frequencies (including some in other countries), designed and distributed more advanced multi-feed satellite antennas, invested in improved compression technologies (MPEG-4) as well as improved modulation technologies (8PSK). At the inception of carry-one, carry-all in 2000, DISH Network provided local service in only 34 markets. Less than seven years later, that number is 174 – translating to over 1460 local broadcasters today. This huge investment in local markets and local broadcasters is a testament to the substantial financial, technological, and engineering investment made by DISH Network to maximize the amount of satellite capacity available. The DBS joint proposal to meet an onerous HD carriage obligation in 2013 is based on the continued commitment of both providers to continue this history of engineering and technological advancement, the most significant component of which is to design, construct and launch new state-of-the-art satellites. The culmination of all our efforts will be the "creation" of new satellite capacity – whether it be in the form of new satellites, new spectrum, or more efficient technologies – that does not exist today.

NAB's Request for Further Inquiry

In its March 6, 2008 filing, NAB states that a formal Commission Notice of Inquiry is warranted because "information about satellite design and capacity is not readily available." In doing so, NAB fails to explain how the existing filings by DISH Network or DIRECTV are incomplete or insufficient, or that any effort was made to review public sources for the answers to its questions. Nor does it provide any evidence that statements made by either party on the record in this proceeding are inaccurate.

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[11] Petition for Partial Reconsideration of EchoStar Satellite L.L.C., MB Docket No. 05-181, 4 (Sept. 30, 2005).

Furthermore, given the unprecedented information request that NAB is suggesting, we have grave concerns that any proposal that involves market-by-market waiver requests would be bogged down by a process resembling discovery in protracted litigation with the aim of second-guessing every business decision and capacity calculation of both DBS providers. Injecting that level of uncertainty so close to the digital transition – and imposing such an unknown and resource-intensive process on DBS providers and Commission staff – cannot serve the public interest.

Nonetheless, in order to facilitate prompt Commission action, we respond to NAB's operational and capacity questions in Appendix A (DISH Network Operations), Appendix B (Joint Proposal and Future Capacity), and Appendix C (210 Markets – Broadcasters Have Not Invested in Rural America). Those responses demonstrate that DISH Network's current fleet operates effectively at full capacity and efficiency, and that the 2013 benchmark proposal is a fair and aggressive timetable to comply with a new highly burdensome regulatory obligation.

Broadcasters Are Attempting to Free Ride on DBS Investment

Although broadcasters are quick to demand that DBS providers invest hundreds of millions of dollars to expand the reach of must carry stations, many broadcasters are unwilling to make that same investment in their own facilities. Ironically, this is particularly true in rural America. For many years, NAB has been asking the government to mandate DBS carriage of broadcast signals in all 210 markets. Yet most of the markets that remain unlaunched by DBS are missing at least one affiliate of the big four networks, thus limiting the commercial viability of DBS service in those rural markets. The broadcasters appear to have concluded long ago that the population is so sparse in these rural areas that they do not generate enough revenue to justify the economic investment – so they are asking the government to force the DBS industry to make the investment for them. Moreover, the broadcasters that are in rural America – as well as broadcasters in DMAs across the nation – have not built out their facilities sufficiently to provide full signal coverage throughout their DMAs. It is clear that the availability of forced carriage on MVPD systems has stripped broadcasters of the proper incentive to serve their entire local communities.

Minimum HD Content Threshold for DBS HD Carriage

If DIRECTV and DISH Network are forced to invest in expensive facilities to extend the reach of broadcasters' HD content, it is fair to ask that the broadcasters also be required to invest in HD content by providing a minimal amount of native HD programming in exchange for carriage rights. Reserving valuable and finite satellite capacity for a broadcaster that transmits a *de minimis* amount of HD programming is a disservice to consumers. The big four networks, carried in HD on DBS platforms today, produce 20-40 hours of HD programming per week – and the quality and quantity of HD programming continues to grow. By contrast, very few must carry stations are broadcasting in HD. Indeed, some financially strapped must carry stations might never invest in expensive equipment needed to produce and deliver native HD content. Planning for and constructing extra satellite transponders that could remain empty "just in case" these stations ever decided to produce HD content is contrary to the public interest. As part of the digital must carry carriage election process, therefore, the Commission should establish a clear HD threshold, which grows over time, that is comparable to the amount of HD carried by retransmission stations. Broadcasters falling under a minimum threshold would still be carried on our system in a down-converted format consistent with the vast majority of programming offered by that broadcaster.

Conclusion

The Commission should adopt the DBS joint proposal, providing certainty to DBS providers and ensuring continuity of service to over 30 million households. This balanced approach accounts explicitly for current satellite capacity, planned satellite capacity, potential compression technology improvements, and the potential anticompetitive ripple effect on DBS local markets and programming if too stringent a requirement is imposed too quickly on satellite systems.

Respectfully submitted,

/s/ Linda Kinney
Linda Kinney
Vice President, Law and Regulation

Attachment

cc: Michelle Carey
Amy Blankenship
Rudy Brioche
Rick Chessen
Cristina Pauze
Monica Desai
Eloise Gore
Robert Nelson
Andrea Kelly
Chip Fleming

DBS HD Must Carry Overview and Support Materials
CS Docket Nos. 98-120, 00-96

Appendix A	DISH Network Operations
Appendix B	Future Capacity and Joint Proposal
Appendix C	210 Markets - Broadcasters Have Not Invested in Rural America
Tab 1	Letter from Members of the Congressional Hipsnaic Caucus
Tab 2	Press Statement from the Media Access Project
Tab 3	Letter from Windstream
Tab 4	Letter from the Satellite Industry Association
Tab 5	DISH Network Satellite Fleet
Tab 6	DISH Network Local-into-Local Markets
Tab 7	DBS Joint Proposal: An Aggressive Timetable
Tab 8	DISH Network Unlaunched Markets

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Appendix A
DISH Network Operations

This Appendix provides an overview of DISH Network's current satellite fleet and network operations and responds to the questions raised in the March 6, 2008 NAB Letter. The majority, if not all, of this information can be found in prior filings in this proceeding, on DISH Network's website (www.dishnetwork.com), in DISH Network's most recent SEC 10-K, the FCC International Bureau's IBFS database, and other industry and public sources. DISH Network has provided subscription television service in primary competition with incumbent cable providers since its launch in March 1996. As of December 31, 2007, DISH Network had approximately 13.78 million subscribers nationwide, and is now the third largest pay television provider in the United States.

Satellite Fleet and Consumer Dishes

The DISH Network Direct Broadcast Satellite ("DBS") service is provided to subscribers through a fleet of ten primary satellites. DISH Network owns five of those satellites: Echo 1, Echo 2, Echo 5, Echo 7, and Echo 10. DISH Network leases all or part of five other satellites: From EchoStar Corporation (which is a separate publicly traded company), DISH Network leases all or part of Echo 3, Echo 6, Echo 8, and Echo 12. From Telesat, DISH Network leases all or part of Anik F3.[1] A chart of the DISH Network satellite fleet is provided at Tab 5. In-depth data on each of the 10 satellites, including current orbital location, launch date, current coverage type (national, regional, or spot beam), frequencies used, and estimated useful life, is also provided at Tab 5.[2]

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1 DISH Network also leases capacity on two additional satellites that offer limited services to DISH Network subscribers today: SES Americom's AMC-15 and EchoStar's Echo 9. DISH Network provides service with only 15 transponders from those two satellites combined, both of which are not optimal for direct-to-home service, requiring special customer equipment to account for that fact that both satellites are Fixed Satellite Service (FSS), not DBS satellites, and are not located in close proximity to DISH Network's DBS satellites. DISH Network's sister company – EchoStar Corporation – also provides FSS service separate and apart from DISH Network. DISH Network has access to all but two of EchoStar's satellites, neither of which could be incorporated efficiently into existing DISH Network services (one is a FSS satellite, and one is a DBS satellite operating in Mexico).

2 Overall, DISH Network's satellite fleet is in good condition. DISH Network's oldest satellites, however, are at or near their designed estimated useful life. DISH Network's satellites have an average expected useful life of between 10 to 12 years. Consistent with other companies with similar-aged satellites, DISH Network is beginning a cycle of updating and replacing its older satellites. This is a capital-intensive process that is detailed in Appendix B. It should be noted that certain satellites in our fleet have experienced anomalies, some of which have had an adverse impact on their commercial operation. By way of example, Echo 3 is designed to operate on 32 transponders at approximately 120 watts per channel with 12 spare transponders to provide redundancy. As a result of traveling wave tube amplifier failures, 26 of the 44 transponders have failed. Because of redundancy switching limitations and specific Commission channel authorizations, DISH Network is not able to operate all remaining 18 transponders at this time. These failures have impacted the commercial operation of the satellite. A full health report on each applicable satellite is publicly available in DISH Network's most recent 10-K filing detailing relevant anomalies and their effect on satellite useful life and current operations. In examining the capacity of any satellite fleet, it is critical to account for the real-world conditions and health of each satellite. Theoretical calculations or analysis of satellite capacity or satellite capabilities based on the original or designed capabilities of a satellite are of minimal probative value.

Both DIRECTV and DISH Network focus their services on the core U.S. DBS orbital slots – 101° W.L., 110° W.L., and 119° W.L. Providing DBS service from a DISH-owned satellite at a DISH-controlled U.S. core DBS slots with full national coverage is most efficient. Because of the limited capacity at those core locations, however, both DBS companies have had to seek out other spectrum frequencies to use. As the fleet chart shows, DISH Network has pursued aggressively the use of U.S. "wing" DBS slots – specifically 61.5° W.L. (over the Atlantic) and 148° W.L. (over the Pacific) – that do not provide full coverage of the United States. DISH Network has also pursued aggressively use of non-U.S. DBS slots, and entered into relationships to use Canadian allocations. DISH Network has also pursued aggressively use of non-DBS spectrum, including the use of Canadian FSS spectrum at 118.7° W.L. The use of other nation's spectrum resources and other providers' finite spectrum has considerable commercial and regulatory cost and risk. It also evidences that U.S. DBS providers are capacity starved, and have been for some time.

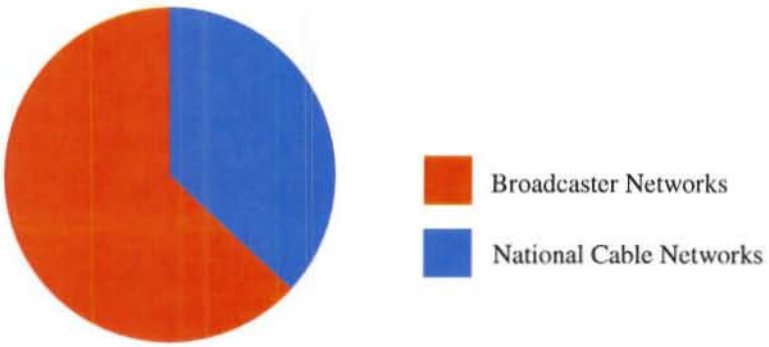
From an operational perspective, new satellite capacity is of little commercial value if DISH Network subscriber dishes cannot view the new satellite, which raises the corresponding challenges of consumer ground equipment. First, there needs to be a critical mass of subscribers that have a consumer dish and potentially a new receiver to view the new satellite. In most instances, this requires a new or additional satellite dish – requiring a costly truck-roll to each applicable consumer – for DISH Network to have the ability to exploit successfully new spectrum. With respect to consumer dishes, DISH Network requires satellites to be located in close proximity to each other to minimize the size of the dish and to minimize the complexity of the dish, *e.g.* number of feed horns. For instance, DISH Network's DISH 1000+ sees satellites at 129° W.L., 119° W.L., 118.7° W.L., and 110° W.L. Spectrum available outside of that range would require a time consuming new dish configuration at great expense. It is also possible – and has proven necessary at times – to provide DBS service with multiple dishes. From a cost and aesthetic perspective, it is not optimal for many consumers. Even this option is constrained by regulation with respect to broadcast content. By law, DBS providers must provide all broadcasters in a market on a single dish, limiting the flexibility of DBS providers to seek out new capacity for bandwidth-intensive services like local HD services. 47 U.S.C. § 338(g).

DISH Network continues to seek out new spectrum opportunities and capacity arrangements to maximize the amount of bandwidth available to deliver video programming to subscribers. Its action to date demonstrates that commitment to explore all potential opportunities to serve its customers.

Satellite Delivery of Local and National Programming

Our satellite fleet provides us with the ability to offer over 2700 channels to subscribers across the United States. Because the majority of our capacity is used to retransmit local broadcasters, no particular consumer is legally permitted to subscribe to all channels (or even most) on DISH Network. Today, local services – both standard definition and high definition – represent well over half the total channels on DISH Network (58 percent of all channels).

DISH Network Channel Breakdown: Local vs. National Programming



Specifically, DISH Network provides local-into-local service in 174 local markets today with plans to enter three additional markets this year. Tab 6 provides a list of all local markets served today. In doing so, DISH Network provides local service to over 96 percent of the nation's households (approximately 110 out of the 114 million households). In total, DISH Network retransmits approximately 1460 local broadcasters today. DISH Network also provides some local broadcast content in HD in 35 markets pursuant to retransmission consent agreements, totaling approximately 129 local HD networks today.

The manner in which local networks and national networks are provided by satellite are quite different. Each DISH Network satellite transponder provides either national services (*e.g.,* CNN, ESPN) through national or "CONUS" transponders, or local service (*e.g.,* CBS, ABC) through "spot beam" transponders. Two of the three satellites operating at the core DBS channels use spot beams today (Echo 7 and Echo 10), including DISH Network's newest and most advanced satellite (Echo 10). The vast majority of the 1460 local stations on DISH Network are provided by spot beam transponders, and the only content provided on spot beams over the continental United States is local broadcaster content.[3] The focus of this proceeding should be on those transponders. In fact, DISH Network's national transponders have very little nexus to this proceeding, and how DISH Network chooses to allocate its national and regional spectrum should be of no consequence to NAB.

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[3] In some instances, national transponder capacity has to be used to provide local service today because sufficient spot beam coverage is not available for all or part of a DMA. Under carry-one, carry-all regulations, DBS providers must provide carriage to all qualified local broadcasters or none at all. Thus, if room is not available on a spot beam transponder for every broadcaster in a market, DISH Network has to either forego service in that market or set-aside national capacity to complete that local market. For example, the Evansville and Paducah local markets are both within the range of the same Echo 10 spot beam transponder. There were, however, too many total broadcasters to launch both markets within the spot beam transponder. In order to launch both markets, DISH Network had to place a Paducah station on national capacity, resulting in lost capacity available nationwide for a national network (whether it be international or ethnic programming, or the most recent iteration of ESPN services). In this case, DISH Network is forced to rob millions of Peters (all of its other subscribers) to pay Paducah (subscribers of a single local market). This inefficient use of national spectrum should demonstrate further that there is insufficient capacity on today's system to provide even the existing local networks.

Today, DISH Network's spot beam transponders are at or near capacity. DIRECTV provides a comprehensive analysis of the "inexact science" of designing and operating spot beam satellites, explaining that "it is simply not possible to perfectly match the spectrum used in each beam with the capacity needed to carry the stations served by that beam."[4] The DMA map snakes its way across the country like gerrymandered congressional districts, challenging DBS providers to design beams and to avoid frequency overlap over asymmetrical geographic areas. The disproportionate clustering of broadcasters in large markets, particularly in the northeast, further constrains the ability of DBS providers to maximize the full capability of spot beam transponders and frequencies. Even the most modern spot-beam satellites – with over 10:1 frequency re-use cannot provide sufficient coverage to the population centers on the East Coast for analog markets today, let alone HD carry-one, carry-all.

To provide a real world example, the Fresno spot beam transponder is at full capacity, retransmitting 13 Fresno broadcasters today. The Great Falls, MT spot beam transponder is not at full capacity, but effectively is full. DISH Network carries all eligible broadcasters in that market, and that spot beam transponder does not see other local markets. The stranded capacity in the Great Falls DMA is trapped by its geography; it cannot be repurposed or shifted to provide additional coverage to any other market. DIRECTV notes, "[t]he relevant inquiry is always how much capacity is available *on a particular spot beam*" in a particular market. *Id.* It should also be noted DISH Network's spot beam transponders cannot be shifted and moved to cover other markets. Rather, DBS providers construct spot beam satellites based on the government carriage rules, broadcaster presence, and consumer demand at the time of satellite design. Radically changing the assumptions underlying the allocation of spot beams – *i.e.*, exponentially increasing the carriage obligations – risks rendering spot beams fallow and markets unserved.

Carriage of HD Broadcasters

DISH Network has invested in new compression and modulation technologies to provide HD services more efficiently on its platform. The incorporation of MPEG-4 video compression and 8PSK modulation has expanded our ability to fit more HD services per transponder. As a result of those advancements, subscribers need special set-top box equipment to receive HD signals. While a growing number of DISH Network subscribers do receive high definition services, the majority of our legacy subscribers continue to receive MPEG-2 standard definition service that cannot view MPEG-4 services. DISH Network will continue efforts to improve its technologies and to push these new technologies to its subscribers. We cannot predict the timing of the transition of all subscribers to MPEG-4 service, or the timing of further technological advancements.

Today, DISH Network provides four HD broadcast channels per transponder underscoring the substantial amount of bandwidth required to retransmit a HD broadcast signal, particularly when compared to the bandwidth required to retransmit a SD broadcast signal. DISH Network is now able to provide 12 to 13 standard definition broadcast channels per transponder. Thus, it requires roughly 3 times the bandwidth to carry a single HD broadcast signal on DISH Network today.[5] When launching HD local networks, DISH Network today uses transponder space separate from

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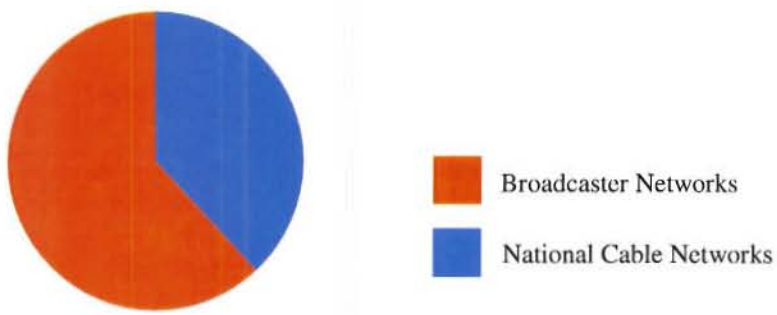
[4] Letter from William Wiltshire to Marlene Dortch, CS Docket No. 98-120, Appendix at 4 (Mar. 10, 2006).

[5] This 3:1 ratio underestimates the true bandwidth difference between SD and HD services, because the most advanced technologies are reserved for HD services today.

those spot beam transponders used for analog carriage, so there is no "reclaimed capacity" alluded to by NAB.

NAB also refers to a 2005 filing by the Network Affiliates that claimed – based on manipulation of a single DIRECTV satellite's claimed capacity – the entire DBS industry could "retransmit the full digital signal of every local television station in America … [in] no more than one-fifth of [each DBS provider's] total bandwidth."[6] That statement is not grounded in the reality of satellite operations, and does not withstand scrutiny. DISH Network already uses 62 percent of active transponders to provide local-into-local services today, the overwhelming majority of which is standard definition analog broadcasters.

DISH Network: Transponder Allocation, Local vs. National Services



Thus, to just provide today's analog carry-one, carry-all service it takes three times more bandwidth then the Network Affiliates suggest is enough to provide every broadcasters' full digital signal. Given that NAB does not appreciate the bandwidth hog broadcasters' analog services are today on both DBS systems, it is not surprising that they grossly underestimate the burden of a carry-one, carry-all HD obligation.[7]

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6 Reply of the ABC, CBS, and NBC Television Affiliate Associations in Support of the Opposition of the National Association of Broadcasters to Petitions for Partial Reconsideration, MB Docket No. 05-181, 6 (Dec. 19, 2005).

7 In response to other NAB inquiries, unlike terrestrial providers that offer multiple services through their video distribution platform, DBS providers do not have the capacity to do so. DISH Network does not offer broadband services directly on their DBS platform. NAB also asks about leased capacity. As a general matter, given capacity limits, DISH Network is the leasee, not the leasor, seeking additional capacity from other providers. In limited instances, DISH Network has leased a *de minimis* number of national transponders to third parties. The most prominent example is Dominion's Sky Angel service that provides religious satellite broadcast service. DISH Network has not, however, leased any spot beam transponders dedicated to local-into-local content to any third parties.

Appendix B
Joint Proposal and Future Capacity

The DBS industry has demonstrated that both providers currently operate at or near capacity, and it is a physical impossibility for either provider to comply with an onerous HD must carry obligation in February 2009. NAB notes that "DBS providers need to design, build and launch satellites that are compliant with the Commission's carriage rules." *NAB Letter,* Questions at 1. DBS providers cannot build satellites to comply with carriage obligations that do no exist – rules must come before compliance.

The DBS joint proposal, however, is based on the same principle underlying NAB's statement: If the Commission explains the specific burden to be imposed on DBS providers, both DIRECTV and DISH Network can work towards launching a satellite (or satellites) built to meet that burden. Given the costs – both real and opportunity – of constructing one or more state-of-the-art satellites that will require the use of finite DBS spectrum frequencies, DISH Network submits that the such a high burden is not warranted here absent a broadcaster's commitment to a similar multi-year investment plan to deliver a minimum number of hours of native HD content over-the-air to all of their communities. See Appendix C.

Regardless, it is self-evident that a DBS HD must carry satellite(s) cannot be designed, built, and launched in the 11 months prior to the February 2009 transition. DISH Network will require sufficient time to implement any new requirements or regulations. Cable providers will have had eight years to prepare for the transition with knowledge of their digital must carry obligation.[1] The DBS industry seeks less time, until 2013 – four years from the transition date – to do the same. Moreover, in response to Commission request, the DBS industry has agreed to interim benchmarks in 2010, 2011 and 2012 to expand the number of local stations in HD.

HD Carry-One, Carry-All in 2013

To comply with a HD carry-one, carry-all obligation, DBS providers would have to construct new satellites, acquire new spectrum, and invest in new technologies. All three are expensive, multi-year processes. The DBS providers' proposed hard compliance date of February 2013 is optimistic and aggressive.

With respect to satellite construction, SIA has explained that "satellite construction is a time consuming and resource-intensive process. From start to finish, a state-of-the-art spot beam satellite takes approximately four years to plan, contract for, design, construct, and launch." *SIA Letter* at 1. That framework comports with our experience. DISH Network plans to launch Echo 11 in June of this year. A timeline of that satellite's design and construction is illustrative. That satellite was conceived of and designed internally in 2003. DISH Network entered into a satellite manufacturing contract in 2004. The

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1 *Carriage of Digital Television Broadcast Signals,* First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22 (2001).

satellite construction was completed and the launch was scheduled for 2007. A four year process that was ultimately delayed by approximately a year by launch provider delays. Echo 11 is now planned for a June 2008 launch. SIA confirms the frequency of delays beyond providers' control: "the satellite construction process may extend beyond four years if there are satellite construction delays or launch failures." *Id.* It is clear that an earlier hard date – *e.g.* February 2012 – less than four years from today – is not reasonable. The Commission's satellite licensing rules for satellite launch milestones are instructive here and suggest a cautious approach. Those rules require geostationary satellites to be launched within **five** years from the date the license is issued. 47 C.F.R. § 25.164(a)(4). Applying the same principle here, five years from now would be a defensible and fair approach: mid-year 2013.

New spectrum resources will also likely be necessary because all available DBS spectrum is utilized fully today. Launching a super spot-beam satellite(s) to comply with HD must carry would not provide the necessary capacity to meet that obligation absent the availability of new spectrum. Because there are finite spectrum frequencies at any given orbital location, adding a new satellite either supplants an older satellite or requires the two satellites to split the available frequencies. Given the likely magnitude of the Commission's mandate, SIA explains that "separate and distinct from the satellite construction process, new spectrum resources will be necessary to satisfy a new DBS carriage obligation." *Id.* The 17/24 GHz BSS band (Reverse Band) is a promising source of new spectrum to satisfy a HD carry-one, carry-all obligation. That spectrum is allocated in a manner to facilitate direct-to-home services, and DIRECTV and EchoStar each have five pending applications for service. Specifically, the Reverse Band will "complement existing Direct Broadcast Satellite (DBS) services."[2] The International Bureau is expected to take action on those licenses in the near future. Assuming the issuance of licenses mid-year, the launch milestones for each company's Reverse Band satellite would be mid-year 2013, further supporting the DBS joint proposal timeline.[3]

Lastly, DBS providers will continue efforts to maximize the bandwidth available on existing and new transponders: seeking improvements to MPEG-4 compression technologies and 8PSK modulation technologies. To do so, the DBS providers will also need to provide higher power operations to allow these technologies to work properly. In very few years, DBS providers have doubled the number of HD services available per transponder from 1 to 2, and then again to the current 4 used on DISH Network today.

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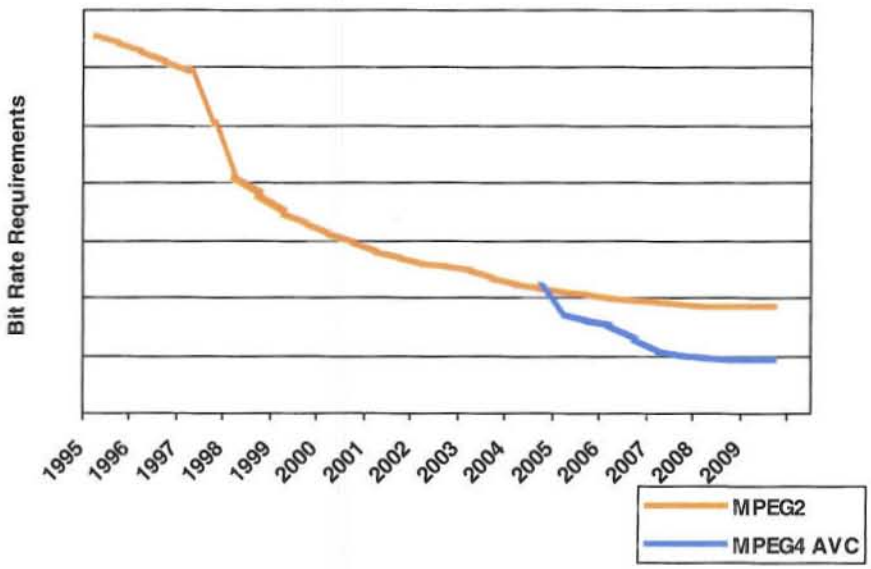
2 *The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band,* Report and Order and Further Notice of Proposed Rulemaking, FCC 07-76 (May 2007).

3 There are also real costs to adding new orbital locations to a satellite fleet: SIA concludes that "[i]ncorporating and integrating such new spectrum resources into an existing satellite fleet, consumer dish configurations, and ground infrastructure is also a resource-intensive process." *Id* Specifically, providing consumers with access to a new satellite incorporating new spectrum would require the design, construction, and installation of new consumer dishes, as well as potentially the design and construction of new satellite uplink facilities.

The following chart provides an overview of the improvements over time in compression technologies:

Video Compression Improvements (1995 to 2009)



Continued efforts to expand the number of HD services available per transponder would provide an improved path to HD must carry compliance. With two notes of caution, we are optimistic that further incremental improvements to MPEG-4 compression will allow DISH Network to maximize further the number of HD services per transponder. First, DIRECTV is right to warn that "[e]xpected improvements in satellite-related technology do not always progress at the rate anticipated." *DIRECTV Letter,* Appendix at 7. Second, it should be noted that the chart above shows that the substantial efficiency gains of MPEG-4 have been achieved, and future gains will not be as dramatic.

A Transition Period

The Commission has clear evidentiary support and legal authority to move forward with a 2013 hard deadline without the need for any milestones. *See e.g., NAB Letter* at 8. In response to Commission staff requests, however, the DBS industry has offered fair and aggressive interim benchmarks in each year after the digital transition.

During this transition period, DBS providers would have the flexibility to offer broadcaster content in HD or in a down-converted SD format to account for capacity constraints and spot-beam and satellite frequency limitations. In a growing number of markets each year after the digital transition, the DBS providers would be required to comply fully with a HD carry-one, carry-all requirement, and reach 100 percent compliance by 2013 in the markets in which HD local service is provided. The need for a ramp-up period is two-fold: (1) it provides the means for DBS providers to respond to consumer demand for some local HD content as soon as possible (even in those markets where there is insufficient capacity to reserve space for all broadcasters in HD); and (2) it

provides time for DBS providers to launch new satellites, build-out necessary ground equipment and maximize satellite compression and modulation technologies to meet the substantial additional burden of HD carriage.

The interim milestones should be as follows:

- February 2009 — 100 percent standard definition digital carry-one, call-all obligation.[4]
- February 2010 — HD carry-one, carry-all obligation in 15 percent of local markets in which HD local programming is retransmitted. Markets selected by each DBS provider based on available capacity.
- February 2011 — HD carry-one, carry-all obligation in 30 percent of local markets in which HD local programming is retransmitted. Markets selected by each DBS provider based on available capacity.
- February 2012 — HD carry-one, carry-all obligation in 60 percent of local markets in which HD local programming is retransmitted. Markets selected by each DBS provider based on available capacity.
- February 2013 — HD carry-one, carry-all obligation in 100 percent of local markets in which HD local programming is retransmitted.

These milestones were derived after substantial efforts on the part of both companies' engineers to arrive at aggressive targets that reflect the different strategies and different paths to compliance of each DBS provider. There are a number of substantial variables in this analysis that neither provider can accurately predict, including the aforementioned satellite technology improvements, the results of the broadcaster carriage elections this Fall (DBS providers do not even know yet what how many total broadcasters must be carried in February 2009), the amount of HD content provided by must carry broadcasters (again unknown), the success of satellite launches, and the overall health of the existing satellite fleet.

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[4] DIRECTV provides a detailed explanation as to why any additional burdens in February 2009 would be particularly problematic as the DBS industry begins in earnest next week its process of preparing 180 local markets for the digital transition swapping out analog equipment for digital equipment for over 1400 broadcasters nationwide. *DIRECTV Letter*, Appendix 5-7. Indeed, requiring our engineers to make further changes to our local receive facilities to accommodate must carry broadcaster HD content – which would entail the expansion of local receive facility space and the acquisition of additional fiber backhaul facilities – would jeopardize that schedule, and would add unnecessary risk to the broadcaster/DBS transition.

To achieve these milestones, DISH Network plans to mine its existing and planned capacity taking into account future launches and improved satellite technology. DISH Network has plans for three satellites after February 2009 (separate and apart from any must carry compliant satellites) that match up generally with the interim requirements. Next year, EchoStar 14 is planned for a mid-year launch and will provide national coverage. Two additional satellites are planned for late 2009/early 2010 and late 2010/early 2011 respectively, one of which will be a spot beam satellite. None of these satellites in the pipeline are designed to comply with an onerous digital carriage obligation, nor will they provide sufficient extra capacity in the population dense areas of the nation most needed to reach full compliance.[5]

Interim Satellites

The three planned DISH Network-related satellite launches this year do not alter the above analysis. Two of those satellite launches have been delayed significantly, pushing back DISH Network's provision of planned HD and local services to consumers. It should also be noted that DISH Network's satellite fleet is aging and the launch of these satellites begins the process of updating and replacing older satellites. The three planned launches include:

- AMC-14, to be launched on March 15, 2008 to 61.5° W.L. will provide higher power national services. The satellite has been delayed several years.

- Echo 11, to be launched in June to 110° W.L. will also provide higher power national services. The satellite has been delayed approximately one year.

- In the latter half of this year, Ciel-2 will launch to 129° W.L. DISH Network will have access to approximately 50 percent of that Canadian satellite's spot beam transponders capable of serving local markets in the western U.S.

First, from a capacity standpoint, these satellite launches replace existing satellite services, and, therefore, do not standing alone provide any new capacity for satellites services. By way of example, Echo 11 will replace Echo 8 at 110° W.L. and operate on the same frequencies as the existing satellite does today. What is more, none of these satellites have been designed or planned to satisfy an onerous HD must carry obligation. Further, two of the satellites are leased from other satellite providers (SES Americom and Ciel) and one will use a Canadian orbital location underscoring that DISH Network remains spectrum and satellite-starved. This is not to say that the three launches will not result in some efficiencies and incremental capacity gains. In particular, half of the

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5 Tab 9 provides a representative example of the substantial undertaking complying with these milestones will be for each provider. This analysis assumes a DBS provider begins 2009 in approximately 100 HD markets – as both have publicly stated – and adds a handful of HD market launches each year. The DBS joint proposal would result in a substantial increase in the amount of HD local stations in a very short period. DISH Network – which took 9 years (1999 to 2008) to provide 1450 standard definition channels – will likely reach a HD local carriage level equivalent to 1450 standard definition channels (assuming a 3:1 ratio) before 2010. Less than four years after the first HD local market was launched.

transponders on the Ciel-2 spot beam satellite will provide some new capacity over the western United States from Canada. The launch of these three satellites will also free up Echo 3, Echo 5, Echo 6, and Echo 8 for potential expanded service from other orbital locations over time. Much of the gained capacity resulting from these launches and moves is earmarked for services already publicly announced, including the goal of providing some HD content in 100 local markets to remain competitive with cable.

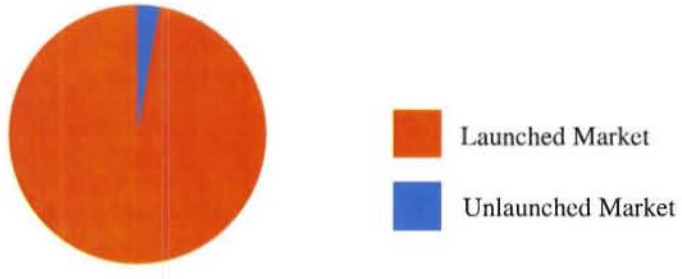
Appendix C
210 Markets - Broadcasters Have Not Invested in Rural America

This Appendix provides data about the rural markets at issue in response to NAB's call for a government mandate that requires DBS providers to launch all 210 local markets on satellite. We provide an overview of the 36 markets not served by DISH Network today (3 of the 36 are planned for launch this year) to offer some perspective of the size and make-up of these markets. We then explain the three main reasons why DISH Network is not in more local markets today: (1) the lack of broadcaster investment in these markets; (2) the considerable infrastructure costs of serving local markets; and (3) the lack of available spot beam frequencies and spectrum. While we think it is important for policymakers to understand the reason DISH Network is not in more local markets, we also note that NAB's request for a government mandate is contrary to congressional intent as well as constitutionally infirm.

The Rural Commitment by DBS Providers

At the outset, NAB grossly exaggerates the areas in which DBS providers do and do not serve local subscribers. DISH Network provides local-into-local service to 174 out of 210 markets today. This represents approximately 110 out of the 114 million households nationwide, or over 96 percent of all households.

Total Households Provided Local Service by DISH Network



Significantly, these statistics do not include the three additional markets DISH Network plans to expand service to this year, or the three markets DIRECTV serves today that are not on DISH Network. With the addition of those markets by the end of the year, the DBS industry will serve close to 98 percent of all households nationwide. Despite NAB's attempt to portray this as unsatisfactory, the investment to retransmit over 1460 broadcasters nationwide is a technical and engineering accomplishment.

Challenges in Serving Local Markets

DISH Network systematically reviews the list of unlaunched local markets to evaluate the ability and desirability of launching additional local markets. It is in the business interest of DISH Network to launch in as many markets as is fiscally justifiable, and it has done so consistently.

1. **Broadcaster Lack of Commitment**. One of the primary reasons why DISH Network does not have immediate plans to enter the remaining 33 markets is that DISH Network cannot justify incurring the significant cost of serving local communities where broadcasters have not invested in the market. Eighty-five percent of unlaunched markets (all but five) are missing at least one of the four major networks. A full overview of the remaining markets is included in Tab 8.

Unlaunched Markets Missing Network Affiliates

By way of example, DMA No. 124 Lafayette, Indiana – the largest market not served by either DIRECTV or DISH Network – has only a CBS affiliate. Thus, we could not deliver ABC, NBC or Fox signals to our subscribers. Residents of Jonesboro, Arkansas; Alpena, Michigan; and Zainesville, Ohio face the same impediment to DISH Network local service: only a single big four network in their community. Launching local service in markets lacking one or more major networks is typically commercially unviable.

2. **Infrastructure Costs.** The economics of serving a local market also contribute to DISH Network's decision to launch, or not launch, a particular market. The cost incurred to plan, construct, and maintain a local presence in each launch market is considerable: DISH Network engineers must design and plan a local receive facility, contract for necessary facility space, acquire necessary encoding and receiver equipment, arrange fiber backhaul to one or more DBS uplink facilities, and dedicate finite spot beam capacity for such content. The majority of these costs are relatively fixed, and are not scalable to the size of the market. Layered on top are the costs imposed by broadcasters directly in the form of retransmission consent fees. A decision to incur these start-up and ongoing costs in any given market must be balanced against projections on the acquisition and retention of subscribers in that market. The smaller the market, the smaller the pool of existing and potential subscriber base to offset these costs. For instance, Glendive, Montana has only 5,020 households in the entire market (and two missing network affiliates). When these two factors are combined, DISH Network is faced with rapidly increasing per-household costs to deliver local programming in the smallest markets. Broadcasters have already made the economic decision not to serve these markets, yet want to force DBS providers to take on this non-economic scenario.

3. **Lack of Capacity.** Another challenge faced by DISH Network in launching additional markets is limited spot beam capacity and availability. For instance, the Columbus, GA market – DMA No. 127 with 205,300 households – is not served today by DISH Network because there is no available spot beam capacity or frequencies to serve that market. It is an attractive market that might otherwise be served, but for the lack of capacity. The inability

of DISH Network to launch a market of six broadcasters in standard definition – approximately one-half of a single transponder – should be all the proof necessary to lay to rest NAB's doubts as the veracity of DISH Network's current capacity limitations.

Failure of Broadcasters to Serve Their Communities

It is extremely inefficient for a national distribution system – like DISH Network – to deliver local content that cannot be viewed by subscribers in other communities. Given the substantial amount of bandwidth necessary to retransmit a single high definition broadcast signal, the current burden of mandated carriage of local analog stations will be compounded under a HD carry-one, carry-all regime. A more efficient way for subscribers to receive local must carry content in HD is to combine DISH Network's national content with over-the-air local broadcaster content. To that end, DISH Network has designed at considerable time and expense its HD set-top boxes to include an over-the-air digital tuner to allow subscribers to view their local broadcasters directly. Over-the-air broadcast content is then integrated with DISH Network content and presented to consumers in a seamless integrated fashion, including on DISH Network's electronic programming guide (EPG). The commercial success and viability of this integrated tuner is dependent upon broadcasters providing a good quality digital signal to our subscriber base. Our experience to date has shown that broadcaster signal strength does not cover many of our subscribers, inhibiting our ability – and our subscribers' ability – to rely on this over-the-air broadcast option. Recent studies similarly suggest that there are "serious 'gaps' in digital coverage across the country."[1] The studies suggest that homes relying on off-air reception are at risk for limited or no signal if they are situated beyond a 35 mile radius of TV towers.[2] It is clear that the availability of forced carriage on MVPD systems has stripped broadcasters of the proper incentive to serve their entire local communities – thus reducing the likelihood of free over-the-air broadcasting for all households in their community, not just those in close proximity to their transmitter. The NAB would be better served encouraging its members to invest in the construction of broadcast facilities with sufficient power and scope to serve their communities fully than second guessing the investment decisions and capacity of DBS systems.

NAB's 210 Proposal is Constitutionally Infirm.

Congress explicitly chose a different carriage regime for satellite than cable because of the limited capacity of DBS providers.[3] Rather than cable's forced must carry regime, satellite providers were provided a voluntary choice to enter any or all local markets on a carry-one, carry-all basis. The Congressional Record explains that "[r]ather than requiring carriage of stations in the manner of cable's mandated duty, this Act allows a satellite carrier to choose whether to incur the must carry obligation in a particular market in exchange for the benefits of the local statutory license."[4] In fact,

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1 New Research Sheds Light on Major Glitch in the DTV Transition, (Feb. 12, 2008) http://www.centris.com/pages/viewnews.aspx?newsID=34&SiteID=9.

2 *Id.*

3 *Compare* 47 U.S.C. § 534 *to* 47 U.S.C. § 338.

4 *See* Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong., 145 Cong. Rec. H11795, H11795 (daily ed. Nov. 9, 1999).

the courts upheld the constitutionality of the DBS must carry, regime in part, because of the voluntary nature of the obligation: "the statute does not *require* the satellite carriers to do anything."[5] At the time, NAB argued that there was no burden on speech because the obligation was "triggered by a satellite carrier's voluntary decision."[6] Consistent with the statute, the Commission has found explicitly "the Commission cannot require satellite carriers to carry television stations in markets where they do not offer local-into-local service."[7]

NAB now tries to turn the DBS carriage requirement on its head – counter to its own prior description of the statute's clear limits – and force DBS providers to serve all local markets. To do so would put the Commission right back where it was at the time of *Quincy Cable TV,*[8] where the DC Circuit struck down the Commission's original must carry rules, which were based solely on administrative findings. It was only after Congress provided a clear statutory mandate and significant Congressional findings of harm absent must carry in the 1992 Cable Act, that must carry passed constitutional muster, and only then by the slimmest of margins in the *Turner Broadcasting* case.[9] An attempt by the Commission to explicitly contradict the Congressional findings of SHVIA by regulatory fiat could not be sustained by any court. Once again, the legal and statutory basis for NAB's requested government mandate is lacking. The Commission should not, and cannot, alter the voluntary component of the DBS carry-one, carry-all must carry regime.

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5 *Satellite Broadcasting & Communications Ass'n v. FCC*, 275 F.3d 337, 368 (4th Cir. 2001).

6 *Id.* at 355 fn 6.

7 *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Report and Order, FCC 00-47, at ¶ 5 (2000).

8 768 F.2d 1434 (D.C. Cir. 1985).

9 *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997).

JOHN T. SALAZAR
3RD DISTRICT OF COLORADO

1531 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-4761
202-226-9669 (FAX)

TAB 1

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

COMMITTEE ON AGRICULTURE

COMMITTEE ON VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515

February 14, 2008

The Honorable Chairman Kevin Martin
Chairman, Federal Communications Commission
445 12th St, SE
Washington, D.C. 20554

Chairman Martin,

We are concerned that the Federal Communications Commission may adopt Direct Broadcast Satellite (DBS) digital must carry rules that would force DIRECTV and DISH Network to drop critical programming, whether it be local markets, core services and/or niche services like Spanish-language programming. We ask that you consider the unique capacity issues of satellite so that our communities continue to be served.

We understand that this is a difficult balancing act: to make sure broadcasters who invested in the digital transition get the carriage they need; but at the same time, to ensure that capacity-constrained DBS providers are not forced to drop markets or programming in the short run due to an overly burdensome carriage requirement.

Spanish-language programmers (TuTV, Imagina, Condista) were on Capitol Hill last week to explain to Members that a HD digital carriage requirement imposed on DBS in February 2009 would almost certainly force DBS providers to drop programming: local markets; core services; and/or niche services like Spanish-language. The Spanish-language programmers think any carriage requirement should account for the capacity constraints of DBS.

Both DISH Network and DIRECTV have planned additional capacity which they tell us could come on line over the next several years (i.e., Reverse Band for DISH Network). We are pleased that the DBS providers are already working towards a market solution to carriage constraints.

The FCC should closely examine an approach that does not mandate 100% HD must carry all at once in 2009, but rather establishes a later date-certain by which such carriage should be implemented. This would assure broadcasters that their digital investment pays off with satellite carriage. It would also hold DBS responsible for doing its part in the digital must carry regime and account for DBS' particular capacity constraints in order to avoid any unnecessary carriage disruptions.

Sincerely,

John Salazar
Member of Congress

134 WEST B STREET
PUEBLO, CO 81003
719-543-8200
719-543-8204 (FAX)

225 NORTH 5TH STREET, STE 702
GRAND JUNCTION, CO 81501
970-245-7107
970-245-2194 (FAX)

609 MAIN STREET, #6
ALAMOSA, CO 81101
719-587-5105
719-587-5137 (FAX)

813 MAIN AVENUE, STE 300
DURANGO, CO 81301
970-259-1012
970-259-9467 (FAX)

For Immediate Release

Andrew Jay Schwartzman, President and CEO of Media Access Project has issued the following statement concerning the digital must carry obligations of DBS providers:

> Media Access Project supports the compromise proposal offered by DIRECTV and DISH Network addressing the implementation of a digital must carry obligation on satellite providers. They have offered a measured approach that provides a clear roadmap to full HD must carry compliance in all HD markets within a reasonable timeframe. Importantly, they propose to do so in a manner that protects existing services to consumers, and ensures that DBS providers will offer a viable competitive choice to cable companies. We would be concerned with any regulatory solution that did not ensure continuity of existing services to all 30 million DBS subscribers.

Media Access Project is a 36 year-old non-profit public interest telecommunications law firm which represents the public on media policy issues.

Contact: Andrew Jay Schwartzman
202 454-5681
andys@mediaaccess.org

Brooke Rae-Hunter
202 454-5686
brooke@mediaaccess.org

Eric N. Einhorn
V.P. Federal Government Affairs
Windstream Communications, Inc.
1155 15th Street, N.W., Suite 1002
Washington, DC 20005

(202) 223-7668
eric.n.einhorn@windstream.com

windstream

February 26, 2008

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket Nos. 98-120, 00-96, and 07-91

Dear Ms. Dortch:

On behalf of Windstream Corporation, I write in support of imposing a reasonable transition schedule for any rules requiring direct broadcast satellite ("DBS") companies to carry broadcasters' high definition ("HD") signals. We partner with DISH Network to offer a wide array of popular video programming to more than three million customers in our primarily rural service areas across 16 states.

Windstream applauds the Federal Communications Commission ("FCC") for focusing attention on DBS carriage of digital broadcast channels. We want to ensure our rural customers, to the greatest degree possible, have the ability to access HD video services. As a partner in providing satellite television, we recognize that HD programming is an important component of our communications offerings, and we hope that any FCC action will encourage future deployment of HD services throughout the Nation.

In drafting any new must carry rules, we, therefore, ask that the FCC account for the unique capacity issues of satellite so that our rural customers have access to as much HD programming as possible. The FCC should consider an approach that does not require a flash cut to 100% HD must carry in 2009, but rather establishes a later date-certain by which such carriage should be implemented. Adopting a reasonable transition schedule would encourage satellite providers to speed deployment of HD services, while avoiding any unnecessary

carriage disruptions. It also would assure broadcasters that their digital signals will be able to reach customers in rural communities across the country.

Windstream appreciates the Commission's consideration of our views in this important proceeding.

Respectfully submitted,

/s/ Eric N. Einhorn

Eric N. Einhorn

cc: Michelle Carey
Catherine Bohigian
Amy Blankenship
Rudy Brioché
Rick Chessen
Cristina Pauzé
Monica Desai
Eloise Gore

TAB 4

March 5, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Dockets No. 98-120, 00-96, and 07-91

Dear Ms. Dortch:

The Satellite Industry Association ("SIA") urges the Federal Communications Commission ("Commission") to ensure that the technological and operational challenges of the satellite industry are reflected in any new HD must carry rules imposed on Direct Broadcast Satellite ("DBS") providers. SIA is a U.S. based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, remote sensing operators, and ground equipment suppliers. SIA is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.[1]

Satellite companies provide services using finite satellite allocations and spacecraft. Both DBS providers, and the satellite industry generally, maximize their available capacity to compete with terrestrial and other service providers. In order to satisfy HD must carry requirements, satellite operators must use and have access to additional spectrum resources and construct new spacecraft.

Satellite construction is a time consuming and resource-intensive process. From start to finish, a state-of-the-art spot beam satellite takes approximately four years to plan, contract for, design, construct, and launch. In all, it costs on average $350 million per DBS satellite. In some cases, the satellite construction process may extend beyond four years if there are satellite construction delays or launch failures. In 2007, two of the four principal commercial

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[1] SIA Executive Members include: Arrowhead Global Solutions Inc.; Artel Inc.; The Boeing Company; DataPath, Inc.; The DIRECTV Group; Hughes Network Systems LLC; ICO Global Communications; Integral Systems, Inc.; Intelsat, Ltd.; Iridium Satellite LLC; Lockheed Martin Corp.; Loral Space & Communications Inc.; Mobile Satellite Ventures LP; Northrop Grumman Corporation; SES New Skies; and TerreStar Networks Inc. Associate Members include: ATK Inc.; Constellation Networks Corp,; EchoStar Satellite LLC; EMC Inc.; Eutelsat Inc.; Inmarsat Inc.; IOT Systems; Marshall Communications Corp.; New Skies Satellites, Inc.; Spacecom Ltd.; Stratos Global Corp; SWE-DISH Satellite Systems; and WildBlue Communications, Inc.

launch providers able to launch large DBS satellites experienced launch failures.[2] These failures have resulted in up to a twelve-month delay to launch some commercial satellites. Despite the best efforts of satellite operators, satellite manufacturers, and launch service providers, the process of building and launching a satellite remains a highly technical, expensive, and time-consuming process. Moreover, separate and distinct from the satellite construction process, new spectrum resources will be necessary to satisfy a new DBS carriage obligation. Incorporating and integrating such new spectrum resources into an existing satellite fleet, consumer dish configurations, and ground infrastructure is also a resource-intensive process.

In light of these satellite-specific considerations, SIA asks the Commission to consider proposals that would phase-in any new HD must carry requirements over a minimum of four years from the DTV transition.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

Patricia Cooper
President, SIA

cc:
Michelle Carey
Catherine Bohigian
Amy Blankenship
Rudy Brioché
Rick Chessen
Cristina Pauzé
Monica Desai
Eloise Gore

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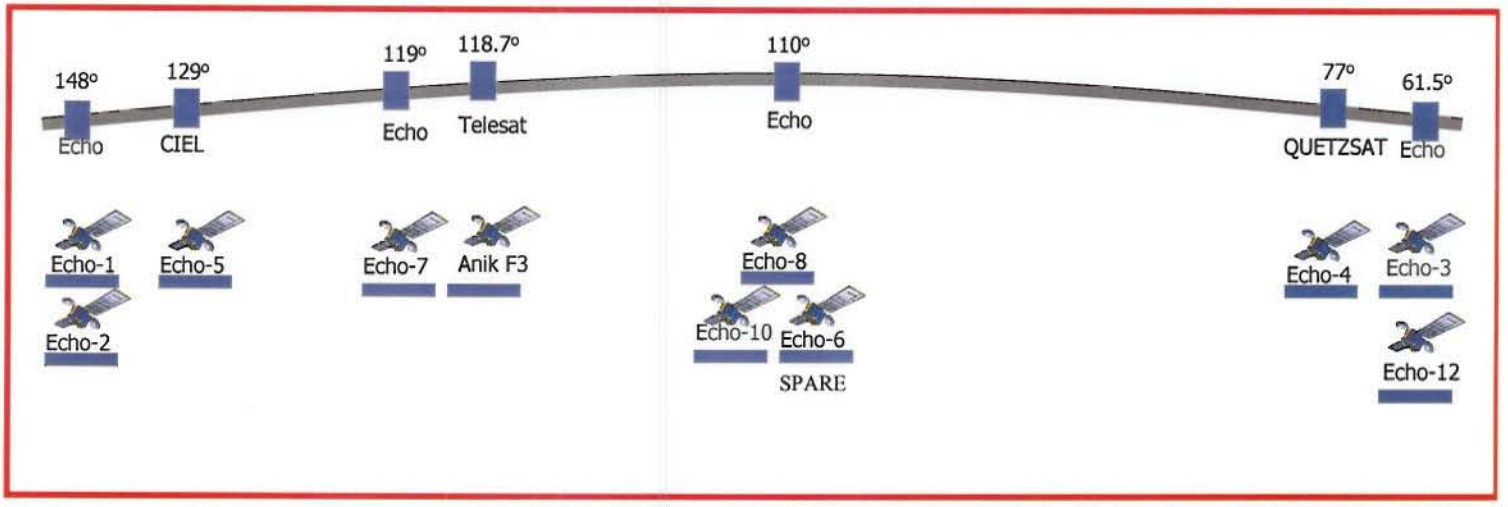
2 Specifically, there was a Sea Launch failure in January and an International Launch Services failure in September. See, e.g., www.nasaspaceflight.com (NASASpaceflight.com has acquired a series of images and videos that give a full insight into the failure of Sea Launch's Zenit 3SL, which was attempting to launch the NSS-8 satellite on January 30). The effect of these launch failures can be the addition of costly delays. For example, the EchoStar 11 satellite launch has been delayed approximately twelve months.

DISH Network Satellite Fleet (Mar. 2008)

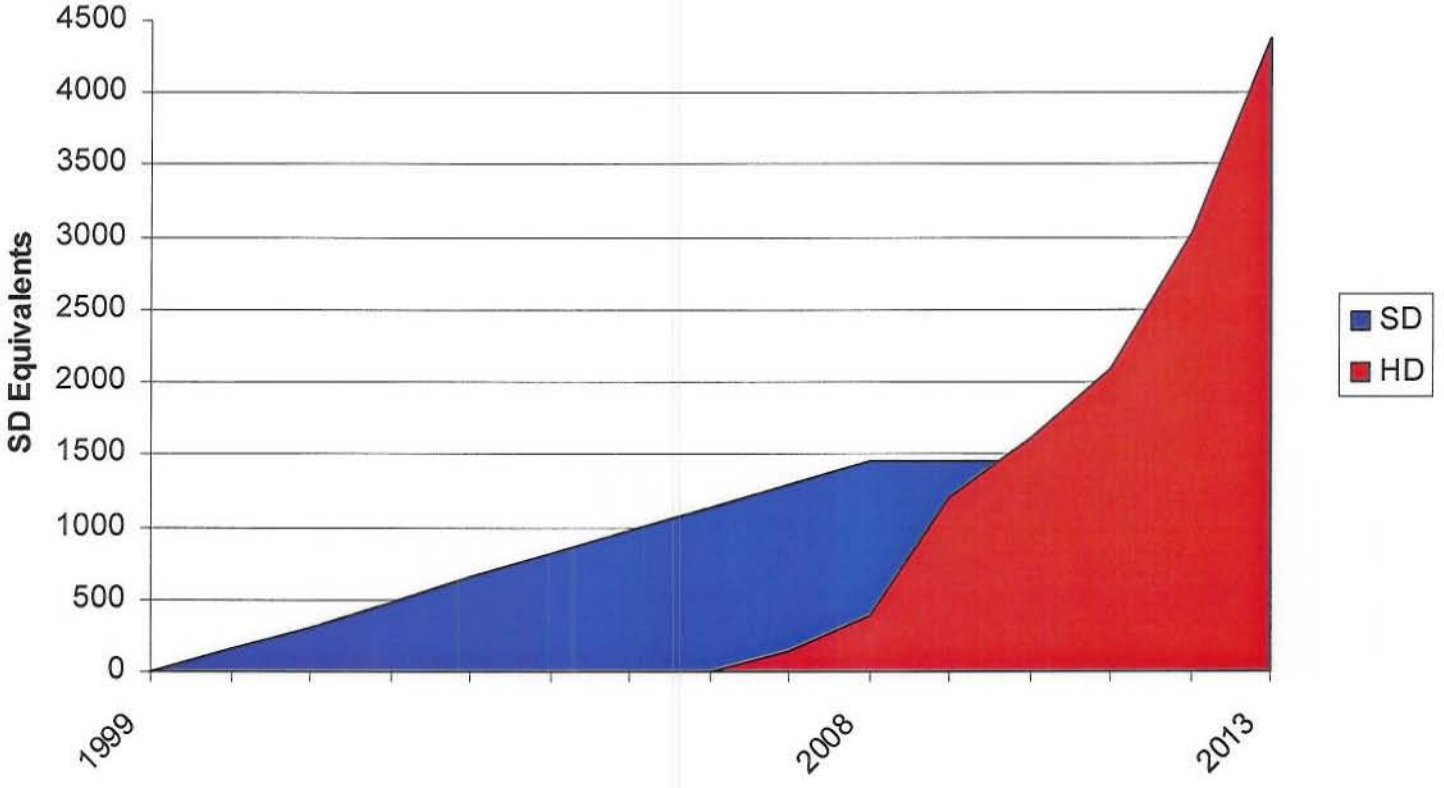


Satellite	Orbital Location	Launch Date	Current Coverage	Avaliable Frequencies	Licensing Nation	Useful Life/ Lease Term
Echo-1	148° WL	1995	Regional	16	United States	12
Echo-2	148° WL	1996	Regional	16	United States	12
Echo-5	129° WL	1999	National	32	Canada	9
Echo-7	119° WL	2002	National & Spot Beam	21	United States	12
Anik F-3	118.7° WL	2007	National	32	Canada	15
Echo-6	110° WL	2000	National	n/a	United States	12
Echo-8	110° WL	2002	National	19	United States	12
Echo-10	110° WL	2006	Spot Beam	10	United States	12
Echo-12	61.5° WL	2003	Regional	11	United States	10
Echo-3	61.5° WL	1997	Regional	15	United States	12

DISH Network Local-into-Local Markets

Abilene	Colorado Springs	Hartford	Monterey	San Francisco
Albany, GA	Columbia SC	Honolulu	Montgomery	Santa Barbara
Albany NY	Columbia MO	Houston	Myrtle Beach	Savannah
Albuquerque	Columbus, OH	Huntsville AL	Nashville	Seattle-Tacoma
Amarillo	Columbus	Idaho Falls	New Orleans	Sherman
Anchorage	Corpus Christi	Indianapolis	New York	Shreveport
Atlanta	Dallas-Ft. Worth	Jackson, MS	Norfolk	Sioux City
Augusta	Davenport	Jacksonville	Odessa	Sioux Falls
Austin	Dayton	Johnstown	Oklahoma City	South Bend
Bakersfield	Denver	Joplin	Omaha	Spokane
Baltimore	Des Moines	Juneau	Orlando	Springfield MO
Bangor	Detroit	Kansas City	Paducah	St. Louis
Baton Rouge	Dothan	Knoxville	Palm Springs	Syracuse
Beaumont	Duluth	La Crosse	Panama City	Tallahassee
Billings	El Paso	Lafayette, LA	Peoria	Tampa
Birmingham	Erie	Lansing	Philadelphia	Terre Haute
Boise	Eugene	Las Vegas	Phoenix	Toledo
Boston	Evansville	Lexington	Pittsburgh	Topeka
Buffalo	Fairbanks	Lincoln	Portland, OR	Traverse City
Burlington	Fargo	Little Rock	Portland	Tri-Cities, TN-VA
Butte	Flint-Saginaw	Los Angeles	Providence	Tucson
Casper	Fresno	Louisville	Quincy	Tulsa
Cedar Rapids	Ft. Myers	Lubbock	Raleigh-Durham	Twin Falls
Champaign IL	Ft. Smith	Macon	Rapid City	Tyler
Charleston, SC	Ft. Wayne	Madison	Reno	Waco
Charleston, WV	Gainesville	Medford	Richmond	Washington, DC
Charlotte	Grand Junction	Memphis	Roanoke	Wausau
Charlottesville	Grand Rapids	Meridian	Rochester, NY	West Palm Beach
Chattanooga	Great Falls	Miami	Rochester	Wichita Falls
Cheyenne	Green Bay	Milwaukee	Rockford	Wichita
Chicago	Greensboro	Minneapolis-St. Paul	Sacramento	Wilkes Barre-Scranton
Chico	Greenville NC	Minot	Salt Lake City	Wilmington
Cincinnati	Greenville SC	Missoula	San Angelo	Yakima
Clarksburg	Harlingen	Mobile	San Antonio	Youngstown
Cleveland	Harrisburg PA	Monroe	San Diego	

DBS Joint Proposal: An Aggressive Timetable



DISH Network Unlaunched Markets (Mar. 2008)

DMA Rank	DMA	Nielsen Housholds	Missing Affiliate
108	**Springfield, MA	264,840	FOX
124	Lafayette, IN	220,030	ABC, NBC, FOX
127	Columbus, GA	205,300	
148	Salisbury, MD	147,890	NBC
149	Bluefield-Beckley, WV	145,850	FOX
154	Wheeling-WV/OH	142,020	ABC
156	Binghamton, NY	138,560	
158	Biloxi-Gulfport, MS	135,540	NBC, CBS
166	Utica, NY	106,130	CBS
167	Hattiesburg, MS	105,000	ABC, FOX
170	Yuma	103,170	
173	Elmira (Corning), NY	97,210	CBS
174	Jackson, TN	95,010	CBS, NBC
175	Lake Charles, LA	94,090	ABC, CBS
176	Alexandria, LA	93,120	CBS
178	Watertown, NY	90,930	NBC
179	Jonesboro, AR	89,530	CBS, NBC, FOX
180	Marquette, MI	89,160	
181	Harrisonburg, VA	85,870	CBS, NBC
182	Greenwood-Greenville, MS	76,800	NBC
183	Bowling Green, KY	75,420	
185	Lima, OH	70,940	ABC
188	Laredo, TX	64,410	ABC
190	Parkersburg, WV	63,990	ABC, CBS
194	Eureka, CA	58,340	
196	Bend, OR	54,250	CBS
199	Ottumwa-Kirksville, IA	51,290	CBS, NBC
200	**Mankato, MN	50,930	ABC, NBC
201	St. Joseph, MO	45,840	CBS, NBC, FOX
202	**Zainesville, OH	33,080	ABC, CBS, FOX
204	Presque Isle, ME	31,140	ABC, FOX
205	Victoria, TX	30,250	CBS
206	Helena, MT	25,810	FOX
208	Alpena, MI	17,790	ABC, NBC, FOX
209	North Platte, NE	15,320	CBS
210	Glendive, MT	5,020	ABC, FOX

*** DIRECTV Launched Market*